LEE ENG BENG & ANOR.

v.

TORAIRAJAH APPAVOO & ORS.

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
SYED AGIL BARAKBAH SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 305 OF 1985]
1 JULY 1986

TORT: *Accident - Liability admitted - Quantum of damages.*

CIVIL PROCEDURE: *Appeal against quantum - Principle on which appellate Court will interfere - Award - Whether manifestly excessive.*

The appellants appealed against an award of RM31,500 to the 2nd respondent who suffered injuries in an accident involving the car in which she was a passenger and the car driven by the 1st appellant and owned by the 2nd appellant.

Held:

[1] The Judge had, in arriving at the global award of RM35,000 (before deduction), taken into consideration not only the 1 cm shortening of the 2nd respondent's right leg but also all other injuries, pain and suffering, the long period of treatment, and the loss of amenities.

[2] Even though the award might be slightly generous, it was not manifestly excessive, and as such it did not warrant interference by the appellate Court.

[Appeal dismissed with costs.]

For the appellants - Amar Chand Vohrah; M/s. Vohrah & Tan Chee Lan
For the respondents - N. Jegatheesan (E. Ramasamy with him); M/s. E. Ramasamy & Co.

JUDGMENT

Syed Agil Barakbah SCJ:

We dismissed this appeal with costs and confirmed the judgment of the learned High Court Judge sitting in Kuala Lumpur. We held that the sum of RM31,500 awarded to the second respondent under the head of general damages was not excessive as to warrant interference by us. We now give our reasons for doing so.

The second respondent (second plaintiff in the Court below) was travelling with her son (third plaintiff) in the car driven by her husband (first plaintiff) which met with an accident near the second milestone Yong Peng/Muar road with another motor car driven by the first appellant and coming from the opposite direction. As a result of the collision, all the three plaintiffs were injured and had to be hospitalised for medical treatment. Subsequently all the three filed a writ claiming for damages against the two appellants on the ground of negligent driving of the first appellant who at the material time was the agent or servant of the second appellant, the registered owner of the other car. When the case came up before Shankar J on 28 October 1984 both the appellants admitted full liability for the accident and that was confirmed before Sheikh Daud J on 29 April 1985. The learned Judge heard the case only on the quantum of damages. The appeal was only against the sum awarded in general damages in favour of the second respondent.

According to the undisputed evidence accepted by the learned Judge, the second respondent suffered the most severe injuries and was hospitalised for a total of 133 days and followed by physiotherapy treatment for about two months. On admission in the District Hospital Batu Pahat, she was found to have the following injuries:

1. Abrasion forehead.
2. 1/2" laceration right forehead.
3. Abrasion right upper eyebrow region.
4. Abrasion right cheek.
5. Bleeding right nostril.
6. Abrasion chin.
7. 3" laceration right knee.
8. 3" irregular laceration left knee.
9. Fracture of right femur which on X-ray showed comminuted fracture lower third right femur.

She was first admitted in Batu Pahat Hospital and received treatment there for about 45 days during which time her right leg was in plaster-of-paris from waist down to the toes. She was unable to walk and was all the time in bed. After her discharge on 13 December 1978 she was further admitted to General Hospital Melaka for treatment for about 80 days. After her discharge, she had to attend as an out-patient. She had to move about on crutches for about one year. She was later examined by the consultant orthopaedic surgeon, General Hospital Melaka on 1 July 1982 who found that the fracture of the right femur had united and resulted in permanent shortening by 1 cm. She walked with a limp. Her right knee movements were restricted to 40º. That was due to being primarily related to the nature of her injury. Her chief complaints were pain in the right knee joint and at the femural fracture site at times. Due to the restriction of movements of the right knee, she was unable to squat, to negotiate stairs and uneven surfaces and found difficulty in doing her daily prayers.

The learned Judge in his grounds of judgment considered the awards in several authorities as guidelines and having regard to facts and circumstances of the case made a global award of RM35,000 for all her injuries, deducted 10% for overlapping and awarded RM31,500. It is clear that the global award was made not purely on the 1 cm shortening of the second respondent's right leg but covered all the other injuries, pain and suffering, the long period of treatment that she had undergone and loss of amenities. Even though the award might be slightly generous, we did not consider it to be manifestly excessive. For these reasons, we dismissed the appeal.

Also found at [1986] 2 CLJ 421